

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the KNOX-KEENE HEALTH CARE SERVICE PLAN ACT OF 1975 relating to the enrollee grievance process.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

On May 18, 2000, the Commissioner filed the proposed changes with the Office of Administrative Law as an emergency regulation. If approved by the Office of Administrative Law, the proposed changes to Section 1300.68 and the adoption of Section 1300.68.01 is effective on May 30, 2000 and will expire on September 28, 2000.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., August 7, 2000. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST

Under the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act) health care service plans ("plans") are required to establish and maintain a grievance system to resolve enrollee complaints against plans regarding health care services. The Knox-Keene Act also allows enrollees to file complaints against plans with the Department of Corporations ("Department"), and establishes a statutory process for resolving complaints with the Department.

Senate Bill 189 (Chapter 542, Statutes 1999), among other things, shortened the period of time from 60 to 30 days in which plans and the Department have to review and resolve enrollee complaints; allows enrollees to seek the Department's review of unresolved grievances after 30 days (instead of the current 60 days), and requires plans to act on emergency grievances, including those involving severe pain, within 3 days of receipt of the grievance (instead of the current 5 days).

In accordance with the changes to the statute made by SB 189, the Commissioner has determined that changes to Section 1300.68 were necessary. These changes will enable the Department to respond to the requirements of the Legislature to resolve enrollee complaints within 30 days.

Section 1300.68 requires plans to establish a grievance system and sets forth the quarterly report form for pending and unresolved grievances. The Commissioner proposes to amend Section 1300.68 to implement the changes made by SB 189.

Subsection (a) is being amended to clarify that plans should resolve grievances within 30 calendar days of receipt of the grievance by the plan or the entity delegated by the plan to resolve grievances, and to provide definitions for the terms "grievance," "complaint," "complainant," and "resolved".

The remainder of subsection (a) is being moved to new subsection (b). Grammatical and format changes are also being made to this subsection, (i.e., former subsections (b) through (h) have been renumbered subsection (b), paragraphs (2) through (8)).

Health and Safety Code Section 1368(a)(5) requires plans to keep all copies of grievances and responses thereto for five years. Paragraph (9) is being added to new subsection (b) to specify that copies of the medical records, documents, evidences of coverage and other relevant information that the plan used to reach its decision, be maintained with the grievance file.

Health and Safety Code Section 1368.01(b) requires that the grievance system include a requirement for expedited plan review of grievances for cases involving an imminent and serious threat to the health of the patient, including but not limited to, severe pain, potential loss of life, limb, or major bodily function. Subsection (10) is being added to subsection (a) to clarify that the plan's grievance system is also to include procedures for the expedited review of grievances.

Subsection (b) of Health and Safety Code Section 1368 allows an enrollee to submit a grievance to the Department for review after the enrollee has completed the plan's grievance system or after participating in the plan's grievance system for 30 days. The Commissioner proposes adopting new subsection (c) to set forth procedures and the information that the plan is required to submit to the Department. Specifically, the plan is required to submit information that it used to reach a decision with respect to an enrollee's grievance within five calendar days after receipt of written notification from the Department.

Health and Safety Code Section 1368 requires plans to submit a quarterly report of grievances which are pending and unresolved for 30 days or more. Subsection (d) sets forth the procedures for the quarterly report. A plan is not required to report grievances filed and processed outside of the plan's grievance system. Paragraph (1) of subsection (d) is amended to expand the list of outside review organizations to include the Center for Dispute Resolution, an independent review organization, and the Department of Social Services (fairness hearings for Medi-Cal enrollees).

The Quarterly Report of Pending and Unresolved Grievances is contained in paragraph (6) of subsection (d) of Section 1300.68. Item 3 of the report is being amended to request the total plan enrollment information for each category, i.e., number of Commercial, Medicare (Risk), Medicare (Supplement) and Medi-Cal enrollees.

Throughout Section 1300.68, the term "complaint" is changed to "grievance". This is necessary for clarity and consistency throughout the rule.

The Commissioner proposes adopting Section 1300.68.01 to clarify procedures for the expedited review of grievances ("urgent and emergency requests").

Subsection (a) clarifies the minimum requirements to be included in the plan's procedures for expedited review. This subsection clarifies that the enrollee's medical condition shall be considered when determining the plan's response time.

Subsection (b) requires the grievance system to provide a primary contact person and at least two back-up contact persons who will handle urgent and emergency requests. The contact persons must have the authority to authorize and/or intervene in health care services and treatment and financial decisions on behalf of the plan without having to obtain further approval from the plan. This subsection requires the contact persons to respond to the Department within a specific timeframe.

Subsection (c) requires plans to provide the Department with the plan's organizational information with respect to urgent and emergency requests; the names, titles, telephone numbers, pager numbers, answering service or voice mail numbers, and e-mail addresses, for contacting the primary and the back-up contact persons; and a monthly duty roster for the primary and back-up contact persons. Plans are required to notify the Department when there are any changes to contact person information or to the monthly duty roster.

AUTHORITY

Section 1344, Health and Safety Code.

REFERENCE

Sections 1368 and 1368.01, Health and Safety Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION(S)

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 06/00-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 06/00-C. As required by the Administrative Procedure Act, the Office of Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500, Sacramento, California.

ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to the State: None. However, the Department anticipates it will need additional staff to handle the workload created by the reduced grievance review period required by SB 189 (Chapter 542, Statutes 1999).
- Cost or Savings to any State Agency: None.
 - Direct or Indirect Costs or Savings in Federal Funding to the State: None.
 - Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
 - No other nondiscretionary cost or savings are imposed on local agencies.
 - Costs to Private Persons or Businesses Directly Affected: Insignificant or none.
 - Effect on Housing Costs: None.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action:

- Does not affect small businesses. Health care service plans are not considered a small business under Government Code Section 11342(h)(2).
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

CONTACT PERSON

Comments or inquiries concerning these proposed regulation changes may be directed to , LEWIS G. CHARTRAND, Supervising Counsel. Enforcement Division. Department of Managed Care. 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-6727.

Dated: June 7, 2000
Sacramento, California

WILLIAM KENEFICK
Acting Commissioner